

as provided for in § 1910.53(g) of subpart B of part 1910 of this chapter.

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§ 1910.4 Processing applications.

When obtaining information concerning applicants and evaluating their qualifications, FmHA or its successor agency under Public Law 103-354 personnel will be covered by the provisions of ECOA and the established policies for the various types of assistance offered by FmHA or its successor agency under Public Law 103-354. If a farm is situated in more than one State, County or Parish, the loan will be processed in the State, County or Parish where the applicant's principal residence on the farm is located. If the applicant's residence is not located on the farm or if the applicant is a corporation, cooperative, partnership or joint operation, the loan will be processed by the County Office serving the County in which the farm or a major portion of the farm is located, unless otherwise approved by the State Office. Applications of FmHA or its successor agency under Public Law 103-354 employees, members of their families, close relatives, or business or close personal associates are processed according to subpart D of part 1900 of this chapter.

(a) *Completed RH applications.* Completed applications are those as described in § 1944.27 (copies available in any REDC office), and all applications for Rural Housing loans will be processed as outlined in that instruction.

(b) *Completed Farm Loan Programs applications and additional FSA responsibilities.* All persons requesting an application will be provided exhibit A (available in any office). The County Supervisor will provide assistance as necessary to help applicants complete their applications. Complete applications will be processed in the order of date received, except as outlined in § 1910.10 of this subpart. If the application is complete when it is first received, a County Office official will stamp the filing date on the front of Form FmHA 410-1 and enter the date in

the "Application Received" and "Application Completed" fields in the Application Processing Module of the Management Records Systems (MRS.) On the date all information necessary to process an application is received, a County Office official will send the applicant FmHA Guide Letter 1910-A-3 (available in any office) notifying the applicant that the application is considered complete. The date entered in the "Application Completed" field in the Application Processing Module of MRS will establish the 30-day and 60-day timeframes for determining eligibility and loan approval/disapproval, respectively. The County Supervisor will verify the information furnished by the applicant, and record and assemble additional information needed to properly evaluate the applicant's qualifications and credit needs. Additional information may be obtained and verified by County Office records, personal contacts, and visits to the applicant's operation. Applicants who request a waiver of the direct OL term limits in accordance with subpart A of part 1941 of this chapter based on the facts that their land is subject to the jurisdiction of an Indian tribe and their loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, automatically consent to the Agency releasing information as necessary to the Bureau of Indian Affairs to confirm these facts. A complete Farm Loan Programs application requires fulfillment of both the applicant and FSA responsibilities, except as provided in paragraph (c) of this section. Once this information is received and the application is considered complete, FSA has additional responsibilities before loan approval is determined. The various responsibilities are as follows:

APPLICANT'S RESPONSIBILITIES FOR A COMPLETE APPLICATION

(1) Completed Form FmHA 410-1, "Application for FmHA Services," including a signed Form FmHA 410-9, "Statement Required by the Privacy Act."

(2) If the applicant is a cooperative, corporation, partnership, joint operation, trust, or limited liability company:

(i) A complete list of entity members showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the entity by each member, or the percentage of interest in the entity held by each member.

(ii) A current personal financial statement from each member of the entity.

(iii) A current financial statement from the entity itself.

(iv) A copy of the entity's charter or any entity agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or entity members authorizing specified officers of the entity to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(3) A brief written description as to the farm training and/or experience of the applicant and the individual members of an entity applicant (new applicants only). If a waiver from the training required in Section 1924.74 of subpart B of part 1924 of this chapter is requested, provide verification of any courses taken which covered production and/or financial management concepts, and/or a statement explaining how the applicant's proven performance based on 5-year production records demonstrates production ability.

(4) Supporting and documented verification that the applicant (and all members of an entity applicant) cannot obtain credit elsewhere, including a guaranteed loan.

(5) Financial records for the past five years. Income tax records may be provided by the applicant when other financial records are not available.

(6) Five years of production history immediately preceding the year of application, unless the applicant has been farming less than 5 years.

(7) A brief written description of the proposed operation and the proposed size of the operation (required for new applicants and existing borrowers with significant changes in their operations).

(8) Verification of off-farm employment, if any. This will be used only

when the applicant is relying on off-farm income to pay part of the applicant's expenses.

(9) Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FmHA 431-2, "Farm and Home Plan," or other similar plans of operation acceptable to FSA.

(10) Applicable items required in exhibit M of subpart G of part 1940 of this chapter including SCS Form CPA-026, "Highly Erodible Land and Wetland Conservation Determination," Form AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification," and Form FmHA 1940-20, as required by subpart G of part 1940 of this chapter.

(11) A legal description of farm, real estate property and/or (if applicable) a copy of any lease, contract, option or agreement entered into by the applicant which may be pertinent to consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement.

(12) Form FmHA 440-32, "Request for Statement of Debts and Collateral," when applicable.

(13) Forms FmHA 1945-22, "Certification of Disaster Losses," and FmHA 1940-38, "Request for Lender's Verification of Loan Application," (EM loans only).

FSA'S RESPONSIBILITIES FOR A COMPLETE APPLICATION

(14) Send Form FmHA 410-7, "Notification to Applicant on Use of Financial Information from Financial Institution," to the applicant when applicable.

(15) Form FmHA 1945-26, "Calculation of Actual Losses" (EM loans only).

(16) Credit reports as provided in subparts B and C of this part.

(17) Form FmHA 1945-29, "ASCS Verification of Farm Acreages, Production and Benefits," (EM loans only).

(18) The Current/Past Debt Inquiry and Borrower Cross-Reference Systems. The Current/Past Debt Inquiry System must be reviewed for each application and copies of the screens must be attached to the applicant's file.

ADDITIONAL FSA FARM CREDIT
RESPONSIBILITIES

(19) Form FmHA 1924-1, "Development Plan," if necessary.

(20) Form FmHA 1940-22, "Environmental Checklist for Categorical Exclusions," or Class I and Class II assessment, whichever is applicable.

(21) Completion of the assessment in accordance with § 1924.55.

(c) Low-Documentation (Lo-Doc) Operating Loans:

(1) To qualify for loan processing under Lo-Doc provisions, an applicant must:

(i) Be current on all payments to all creditors including FSA (if an FSA borrower);

(ii) Have not received primary loan servicing or disaster set-aside on any FSA debt within the past 5 years; and

(iii) Meet one of the following criteria:

(A) The loan requested is \$50,000 or less and the total outstanding FSA operating loan debt at the time of loan closing will be less than \$100,000; or

(B) The loan is requested to pay annual operating expenses and the applicant is an existing FSA borrower who has received and repaid as scheduled, at least two previous annual operating loans from the agency.

(2) A complete Lo-Doc OL application will consist of the items listed in paragraphs (b)(1), (b)(2), (b)(9), (b)(10), and (b)(16) of this section. The Agency may require a Lo-Doc applicant to submit any other information listed under paragraph (b) of this section as needed to make a determination on the loan application.

(d) *Notifying applicants that direct loan eligibility is subject to the unavailability of guaranteed financing.* If the assessment, completed in accordance with § 1924.55 concludes that guaranteed assistance may be available, with or without interest assistance, a prospectus will be sent to area lenders in accordance with § 1951.262(f) as appropriate. If a lender indicates interest in providing financing with a Farm Credit Programs loan guarantee, refer to § 1980.113(c) for handling as a market placement application. No direct loan to a current borrower will be approved until the process outlined in this paragraph has been concluded.

(e) *Incomplete Farm Credit Programs applications.* (1) When an incomplete application is received, a County Office official will stamp the filing date on the front of Form FmHA 410-1, and enter the date in the "Application Received" and "Incomplete Application" fields in the Application Processing Module of MRS.

(2) When an application that was received incomplete is completed, the date will be entered in the "Application Completed" field in the Application Processing Module of MRS. The County Supervisor will follow the requirements of paragraph (b) of this section.

(3) Applicants who do not submit necessary information for complete applications, as described in paragraph (b) of this section, for EM, FO, OL and SW loans, will be handled as follows:

(i) No later than 10 calendar days after receipt of the application, the County Supervisor will send the applicant a letter similar to FmHA Guide Letter 1910-A-1. The letter will:

(A) List the additional information needed.

(B) State that the application cannot be processed until all required information is received in the FmHA or its successor agency under Public Law 103-354 County Office.

(C) Set a specific due date for the information. This date will be 20 calendar days after the date of the letter.

(ii) When information is needed from other USDA Agencies, the County Supervisor will inform those Agencies and the applicant of the information needed, and note the date of the request in the running record. For operating loan applications, the County Supervisor will request that the Agencies return the information to the County Office within 15 calendar days of the date of receipt of the request.

(iii) If the necessary information has not been received from the applicant 20 calendar days after the date of the first written notification of an incomplete application, the County Supervisor will immediately send the applicant a letter similar to FmHA Guide Letter 1910-A-2.

(A) The letter will again list the additional information needed, and state

that the application cannot be processed until all the required information is received.

(B) The letter will set a due date of 10 calendar days from the date of the letter. It will further state that unless the applicant supplies the required information or contacts the County Office by that date, the application will be withdrawn without further notice.

(C) This letter will contain the Equal Credit Opportunity Act (ECOA) statement set forth in §1910.6(b)(1) of this subpart.

(D) A copy of this letter must be sent to the District Office at the same time it is sent to the applicant.

(iv) If the applicant has not contacted the County Office by the due date set in the second notification letter, the County Supervisor will then withdraw the application.

(v) All applications withdrawn will be handled in accordance with §2033.7 of FmHA Instruction 2033-A.

(f) *Notifying applicants (including presently indebted borrowers) about Limited Resource loans.* Immediately after an application for OL, FO, SW, or EM assistance is received, the County Supervisor will send a letter similar to Guide Letter 1924-B-1 to the applicant telling the applicant about Limited Resource loans.

(g) *Notifying socially disadvantaged applicants regarding the availability of Direct Farm Ownership (FO) loans.* Immediately after an application for FO assistance is received, the County Supervisor will send exhibit B of this subpart, "Letter to Notify Socially Disadvantaged Applicants/Borrowers Regarding the Availability of Acquired Farmland," to the applicants. Exhibit B will also be presented to all socially disadvantaged individuals at the time they make their initial contact regarding Agency credit services. Socially disadvantaged applicants are defined in §1943.4 of subpart A of part 1943 of this chapter.

(h) *Notifying Borrowers about Farm Credit Programs (FCP) Borrower Responsibilities.* When an application for OL, FO, SW or EM assistance is approved, the County Supervisor will provide to the borrower exhibit C of this subpart, "Letter to Notify Applicant(s)/Borrower(s) of Their Responsibilities in

Connection with FmHA Farmer Programs Loans."

(i) *Determining eligibility.* The Agency will determine eligibility of all Farm Credit Programs applicants including those who are already indebted for a Farm Credit Programs loan. The Farm Credit Programs application does not need to be complete before it is reviewed; however, all information relative to the eligibility decision must be received. The Rural Housing Service will determine eligibility for all RH loan applicants.

(1) The Agency will certify whether or not the applicant meets the eligibility requirements and whether or not the applicant is a beginning farmer or rancher, as defined in the applicable Farm Credit Programs loan making regulation. An eligible Operating Loan (OL) or Farm Ownership (FO) Loan applicant, who is considered a beginning farmer or rancher, will have access to targeted funds. An eligible FO applicant requesting to purchase suitable farmland, who is considered a beginning farmer or rancher, will be given priority in accordance with §1955.107 (f). In addition, it is the responsibility of the Agency to determine whether or not the FO applicant is an operator of not larger than a family size farm, as of the time immediately after the contract of sale or lease is entered into, even though the applicant is not in need of Agency credit assistance on eligible rates and terms to purchase suitable farmland. The loan approval official will determine the applicant's projected repayment ability, the adequacy of collateral equity to secure the requested loan, and the feasibility of the proposed operation.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible for any loan or grant until the judgment is paid in full or otherwise satisfied. Agency loan or grant funds may not be used to satisfy the judgment.

(j) *Timeliness.* Processing requirements for each program area are as follows:

(1) *Farm Credit Programs (FCP) applications.* Each application must be approved or disapproved and the applicant notified in writing of the action taken, not later than 60 days after receipt of a complete application. The District Director will monitor the processing of all applications to ensure that each is processed in a timely manner and receives a final disposition (i.e., approval, rejection, or withdrawal) within the timeframes outlined in this section.

(i) Receipt by the applicant of a signed copy of the Agency's request for obligation of funds on the appropriate Agency form is written notice of loan approval and any conditions that must be met prior to loan closing. Loan approval conditions may include, but are not limited to, obtaining required real estate and chattel appraisals.

(ii) If a complete application is not approved or disapproved 45 calendar days after all necessary information is received, the following steps will be taken:

(A) The County Supervisor will make sure that the data in the County Office MRS data base regarding the application are up-to-date, and that the reason it remains pending is noted. A selection of reasons is listed in MRS.

(B) Every week the District Director will generate a report, using the FOCUS Ad-Hoc Reporting System, based on the weekly upload of information from each county office MRS data base. The District Director will note each complete application pending more than 45 calendar days, and immediately take steps to ensure that final disposition on the application is taken no later than 60 calendar days after receipt of the complete application.

(C) The Administrator will utilize MRS data and any other information available to comply with any statutory reporting requirements concerning the status of applications.

(2) *Single Family Housing (SFH) loans.* Written notice of eligibility or ineligibility will be sent to each applicant not later than 30 days after receipt of a complete application. If a determination of eligibility cannot be made within 30 days from the date of receipt of the complete application, the applicant will be notified in writing of the cir-

cumstances causing the delay and the approximate time needed to make a decision.

(3) *Labor Housing (LH) preapplications.* Preapplications must be determined eligible and feasible and the applicant notified in writing in accordance with applicable program regulations not later than 45 days after receipt of a complete preapplication. This eligibility determination will be made regardless of funding levels.

(4) *LH applications.* If a determination of eligibility cannot be made within 30 days from the date of receipt of a complete application, the applicant will be notified in writing of the circumstances causing the delay and the approximate time needed to make a decision.

(5) *Adverse decisions.* If an applicant is given an adverse decision, the applicant will be given appeal rights as provided in subpart B of part 1900 or 7 CFR part 780, as appropriate. The letter will contain the ECOA statement set forth in § 1910.6(b)(1) of this subpart.

(k) [Reserved]

(l) *Active applications.* An applicant may voluntarily withdraw an application at any time. Except for incomplete Farm Credit Programs applications, when an applicant has been determined eligible, but further processing is delayed due to an apparent lack of interest, the applicant will be advised by letter that the application will be considered withdrawn unless the County Office receives a written request within 30 days that further consideration is desired. The letter to the borrower will contain the ECOA statement set forth in § 1910.6(b)(1) of this subpart.

(1) Applications for RH, RHS, and LH loans (posted on Form FmHA 1905-4, "Application and Processing Card—Individual," or inputted in the Application Processing Module of MRS) received during any fiscal year will remain active during the remainder of that fiscal year in which they were received, plus the subsequent fiscal year, unless withdrawn or disapproved, or unless the loan is closed.

(2) Applications received for FO, SW, OL, EM, and persons applying for RH loans on farms or nonfarm tracts who derive a major portion of their income

from farming (inputted in the Application Processing Module of MRS), will remain active for 12 months from the date a complete application is received, unless withdrawn or disapproved, or unless the loan is closed.

(3) See paragraph (d) of this section for procedures for incomplete Farm Credit Programs applications.

(4) All applications which are withdrawn or rejected will be handled in accordance with § 2033.7 of the Agency Instruction 2033-A. If notice has been received by the Agency that an adverse action is under investigation or in litigation, that application and all related material will be retained until final disposition of the matter.

(5) When an application has been approved and funds are not available, and the steps outlined in § 1910.6(g) of this subpart have been taken, the following provisions apply:

(i) The County Supervisor will, during the 11th month following loan approval, notify the applicant that the application will expire 12 months from the date of loan approval.

(ii) If the applicant wants the application to remain active, the applicant must provide the County Office with a written request within 30 days, requesting that the application remain active.

(iii) The applications retained at the applicant's request will be extended for only one additional 12-month period.

(iv) If the applicant fails to respond to the County Supervisor's written request, the application will be withdrawn.

[53 FR 35671, Sept. 14, 1988, as amended at 55 FR 21525, May 25, 1990; 55 FR 29560, July 20, 1990; 55 FR 46188, Nov. 2, 1990; 56 FR 66959, Dec. 27, 1991; 57 FR 19523, May 7, 1992; 58 FR 226, Jan. 5, 1993; 58 FR 44746, Aug. 25, 1993; 58 FR 48283, Sept. 15, 1993; 58 FR 68719, Dec. 29, 1993; 58 FR 69195, Dec. 30, 1993; 60 FR 55122, Oct. 27, 1995; 61 FR 35920, July 9, 1996; 62 FR 9353, Mar. 3, 1997; 66 FR 1572, Jan. 9, 2001; 68 FR 7696, Feb. 18, 2003; 68 FR 62223, Nov. 3, 2003; 69 FR 30999, June 2, 2004]

§ 1910.5 Evaluating applications.

The following criteria will be considered in addition to the eligibility criteria in applicable program regulations.

(a) *Age of applicant.* When evaluating the application, the age of the appli-

cant will not be used as a consideration of eligibility (provided the applicant has reached the legal age of majority in the State, or has had the minority removed by court action) except when a specific age is being used to the advantage of the applicant (e.g. assistance under the 504 grant program).

(b) *Credit history.* Credit history will be a consideration to the extent that it is used in evaluating all applicants for similar types and amounts of credit. For instance, credit requirements for a female applicant will not differ from those for a male applicant.

(c) When the applicant, including any members of an entity applicant, caused the Agency a loss by receiving debt forgiveness, they are ineligible for assistance in accordance with applicable program eligibility regulations. If the debt forgiveness is cured by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's creditworthiness. The following circumstances do not automatically indicate an unacceptable credit history:

(1) Foreclosures, judgments, delinquent payments of the applicant which occurred more than 36 months before the application, if no recent similar situations have occurred, or Agency delinquencies that have been resolved through loan service programs as defined in § 1951.906 of part 1951 of subpart S of this chapter.

(2) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(3) "No history" of credit transactions by the applicant.

(4) Recent foreclosure, judgment or delinquent payment when the applicant can satisfactorily demonstrate that:

(i) The circumstances causing any of the above were of a temporary nature and were beyond the applicant's control. Example: loss of job; delay or reduction in government benefits, or other loss of income; increased living expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the